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TAGS: [KCRM](#) [KJUS](#) [PGOV](#) [PHUM](#) [PREL](#)
SUBJECT: NKUNDA LOSES ROUND TWO; JUSTICE MINISTERS MEET ON
HIS FATE

REF: KGALI 162

Classified By: DCM Cheryl Sim for reasons 1.4 (b) (d)

¶1. (C) On April 17, a Rwandan Intermediate court in Gisenyi denied an application for release of detained renegade Congolese General Laurent Nkunda. Ruling on procedural grounds similar to those of an earlier Kigali court (Ref A), the court held that it lacked the "competence" to hear the matter. Specifically, the court ruled that Nkunda's legal team bore the burden of demonstrating the location of the detained general, and the nature of the charges against him. As his lawyers could not meet that burden, the court declined to proceed. Nkunda's lawyers expressed amazement at a second court ruling placing such on burden on the detained person's attorneys. "This is not habeas corpus as it's practiced anywhere in the world," Nkunda's Canadian counsel Steven Bourgong commented to us immediately after the hearing. Bourgong noted the Rwandan constitution specifically provides for a detained person to know the nature and causes of charges against them. (Note: Rwandan law provides for the court nearest the place of detention to exercise jurisdiction. End note). Nkunda's attorney's appealed this ruling to the nearest High Court, located in Ruhengeri, with a new hearing schedule for May 15.

¶2. (C) The justice ministers of Rwanda and the Democratic Republic of the Congo (DRC) met May 5 in Kigali to discuss Nkunda's disposition, as a follow-up to a recent bilateral "Four-Plus-Four" meeting between the two nations. The ministers issued a joint communique following their discussions (communique faxed to AF/C and Kinshasa May 6). The communique provides that:

- Nkunda is a Congolese citizen and "has to be dealt with" by the Congolese judiciary for alleged crimes in the DRC;
- Nkunda is on Rwandan territory and is subject to Rwandan law regarding extradition;
- Rwanda acknowledges receipt of a DRC extradition request for war crimes and crimes against humanity;
- A team of legal experts "should" convene a meeting within a reasonable period of time to work on "legal obstacles" to a transfer to the DRC; this team will consider 1) the impact of any DRC amnesty law on extradition, 2) the legal "impediments" to extradition given Rwanda's 2007 abolition of the death penalty (note: the DRC has the death penalty), and 3) the implication of national, regional, and international

law on the extradition request.

¶3. (C) On May 8, Rwandan Justice Minister Tharcisse Karugarama told us that the essential point was the two nations had established a close and cooperative relations on this and other issues, and that with good will and good legal work they would find an acceptable compromise. Nkunda was not an ordinary citizen, he said, but a "warlord" previously engaged in a rebellion against a neighboring state; his handling called for caution and precision. Karugarama noted the joint team would examine "all the options," including a possible interim transfer to a third country -- he declined to name any potential candidates. Echoing comments he made to the local press earlier in the week, he said the Nkunda family's legal efforts were "complicating" the case, and the Qfamily's legal efforts were "complicating" the case, and the extradition process might not be formally begun until the family's application before Rwandan courts was fully heard. "Nkunda is owed a proper legal process," he said. But did the family understand the implications of what they sought, he mused. "If his legal team wins his release, what then? We could expel him to the DRC -- that might not be what the family wants; they need to think this through."

¶4. (C) Comment. The intermediate Rwandan courts have so far asserted ignorance as to Nkunda's whereabouts and possible charges against him. The executive branch has now formally acknowledged its custody of him, and specifically the existence of an extradition request by the DRC based on war crimes charges. The High Court hearing on May 15 may now consist of more than preliminary procedural jousting, but an actual examination of the basis for his detention. Meanwhile

the two governments will continue to examine his ultimate status, and reach for a mutually acceptable resolution. End comment.
SYMINGTON